

DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235



June 19, 2003

State of California
Department of Transportation, District 11
Attn: Lawrence Carr
P.O. Box 85406
San Diego, CA 92186-5406

11-SD-15
EA 232641

Dear Mr. Carr:

Enclosed is Streambed Alteration Agreement **R5-2003-0117** that authorizes work on the Interstate 15 Managed Lanes project impacting Los Penasquitos and San Clemente Canyon Creeks in San Diego County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Determination (NOD) on the project on 6/19/2003. Under CEQA regulations, the project has a 30-day statute of limitations on court challenges of the Department's approval under CEQA.

The Department believes that the project fully meets the requirements of the Fish and Game Code and CEQA. However, if court challenges on the NOD are received during the 30-day period, then an additional review or even modification of the project may be required. If no comments are received during the 30-day period, then any subsequent comments need not be responded to. This information is provided to you so that if you choose to undertake the project prior to the close of the 30-day period, you do so with the knowledge that additional actions may be required based on the results of any court challenges that are filed during that period.

Please be aware that this agreement is not valid until the Department has received proof that you have paid the CEQA document filing fee.

If you have any questions regarding the Streambed Alteration Agreement, please contact Pam Beare at (858) 467-4229.

Sincerely,

For C.F. Raysbrook
Regional Manager

Enclosure
cc: Pam Beare

CALIFORNIA DEPARTMENT OF FISH AND GAME
4949 Viewridge Avenue
San Diego, California 92123

Notification No. R5-2003-0117
Page 1 of 5

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Lawrence Carr (MS-27) of the State of California, Department of Transportation, District 11, P.O. Box 85406, San Diego, CA 92186-5406, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 18th day of April, 2003, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): Los Penasquitos and San Clemente Canyon Creeks, San Diego County, California, (Section 20, Township 14S, Range 2W, Poway Quad. and T15S, R2W, La Mesa Quad.).

WHEREAS, the Department (represented by Pam Beare through a site visit on the 28th day of April, 2003) has determined that such operations may substantially adversely affect those existing fish and wildlife resources within Los Penasquitos and San Clemente Canyon Creeks, specifically identified as follows: amphibians: Pacific tree frog; reptiles: orange-throated whiptail, side-blotched lizard, western fence lizard; birds: belted kingfisher, mourning dove, Anna's hummingbird, white-throated swift, black phoebe, Say's phoebe, cliff swallow, bushtit, ruby-crowned kinglet, yellow-rumped warbler, Wilson's warbler, California towhee; mammals: bats; riparian vegetation which provides habitat for those species: arroyo willow, mulefat, spikerush, cattail, watercress, San Diego sagewort; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates June 15, 2008 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2003-0117

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 *et seq.*
2. The Operator proposes to alter the streambeds in order to widen and retrofit the Los Penasquitos Creek bridge, and extend the drainage culverts at San Clemente Canyon Creek. This work is part of the Interstate 15 (I-15) Managed Lanes and Operational Improvements project. The purpose of the project is to relieve congestion and improve mobility along this segment of I-15 by increasing capacity with the construction of both high occupancy vehicle lanes and the addition of a bus rapid transit system.
3. The agreed work includes activities associated with No. 2 above. The project area is located in San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including project plan sheets (X-1 through X-6 and L-1 through L-8, all dated 01-07-03, and the temporary bridge and drilling impacts sheets for Los Penasquitos Creek dated 09-12-00), the Wetland Delineation-Interstate 15 Managed Lanes dated April 2003, and the Natural Environment Study-Interstate 15 Corridor Marine Corps Air Station Miramar to the City of Escondido, San Diego County, California dated September 13, 2000, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.272 acre (0.002 acre permanent and 0.27 acre temporary) at Los Penasquitos Creek and 0.2 acre (permanent) at San Clemente Canyon. Habitat at Los Penasquitos Creek consists of southern willow scrub; at San Clemente Canyon it consists of emergent wetland dominated by spikerush. No trees shall be removed, but may be trimmed if necessary.
5. The Operator shall mitigate for all temporary impacts by revegetating the area with native species appropriate for that habitat type; plans for the revegetation of these impacts shall be submitted to the Department for review and approval at least 30 days prior to the impact. Mitigation for permanent impacts will be included with the remainder of the I-15 Managed Lanes project which will include the mitigation for impacts at Lake Hodges and Green Valley Creek. The mitigation plan shall be submitted for review, and must be approved by the Department, before the streambed agreement for Lake Hodges and Green Valley Creek can be finalized. All mitigation shall be installed as soon as possible, but no later than 1 year from the date of the initial impacts of the project. Installation of the mitigation after 1 year, and/or for each year the site does not meet the restoration goals, shall result in the requirement for additional restoration at a ratio of 1:1.
6. The goal of the restoration shall be creation of self sustaining habitats with species composition and plant densities similar to nearby natural habitats. An annual report documenting the status of the habitat restoration areas shall be submitted to the Department by Dec. 1 of each year, for 5 years after planting, or until the success criteria have been met, whichever is longer. This report shall include a description of the methods used (methods must be appropriate for evaluating the site relative to the success criteria), the number of plants replaced by species along with the date of replacement, an evaluation of the revegetation effort, a description of any remedial actions that are needed along with a schedule for accomplishing those actions, and photos from designated photo stations. The Operator is responsible for replacement planting, maintenance and monitoring until the success criteria are met; maintenance and monitoring shall continue for 5 years after the last replacement planting is done. After 5 years and achievement of the success criteria, the site will be visually evaluated each year for an additional 5 years to determine if it will function without supplemental watering; a brief report of the findings shall be submitted to the Department by Jan. 1 each year. If it appears that the site no longer meets the success criteria, supplemental work may be necessary, as determined by the Department. If there is disagreement between the Operator and the Department regarding the visual evaluation of cover, the quantitative method previously used to evaluate site success will be used to make the determination. The mitigation site will not be deemed successful until the Department provides written approval.

7. Any irrigation of the mitigation areas shall be done in a manner that promotes establishment of the desired habitat type, without creating a plant community that will not function well, or persist, once irrigation is removed.
8. The Operator shall not disturb vegetation or work on bridge structures from March 1 to September 15 to avoid impacts to nesting birds. However, the Operator may impact vegetation and/or work on bridge structures during this time if a qualified biologist conducts an appropriate level of surveys for nesting birds within one week prior to the vegetation disturbance, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
9. Wildlife corridors shall not be impaired either by permanent project features, or construction activities. Measures to ensure this shall include, but not be limited to, no night work, falsework with spaces large enough to allow passage of mule deer, and no open trenches.
10. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be harmful to aquatic life.
11. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The Operator shall have a qualified biologist adequately delineate the perimeter of the work site to prevent damage to adjacent habitats.
12. All work shall be done during daylight hours only, except as follows. Night work necessary to lower equipment down to the site at Los Penasquitos may be done as long as the lighting does not exceed that needed to ensure worker safety and is shielded from all habitat areas.
13. All materials imported to the project site for temporary use during construction, shall be completely removed from the project site at the end of construction.
14. Any boring holes that do not immediately fill in naturally following the completion of that boring shall be backfilled with native material.
15. All debris, including drilling fluids and cuttings, generated by the project will be contained and disposed of off-site (except those used for backfill).
16. Measures to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require that the work site be isolated and /or the construction of silt catchment basins, so that silt, or other harmful materials are not allowed to pass to downstream reaches. The placement of any structure or materials in the stream for this purpose, not included in the original project description, shall be coordinated with the Department. Coordination may include the negotiation of additional Agreement provisions.
17. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream, be placed in locations where they may be washed into a lake or stream, or be placed in locations that may be subjected to high storm flows.
18. Upon Department determination that turbidity/siltation levels resulting from the project, or any project related activities, constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective control devices, or other abatement procedures, have been approved by the Department and implemented.
19. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
20. Staging/storage areas for equipment and materials shall be located outside of the stream or lake.

21. No equipment maintenance shall be done within or near any stream channel or lake where petroleum products or other pollutants from the equipment may enter these areas under any flow.
22. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
23. Spoil sites shall not be located within a stream/lake, where spoil can be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
24. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
25. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake by Operator, or any party working under contract or with the permission of the Operator, shall be removed immediately.
26. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Operator to ensure compliance.
27. The Operator shall **provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work** and must be presented to any Department personnel, or personnel from another agency upon demand. **All project personnel shall abide by all terms and conditions of this agreement.**
28. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.
29. The Operator shall notify the Department, **in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities.** Notification shall be sent to the Department at 4949 Viewridge Avenue, CA 92123, Attn: Pam Beare/SAA No. R5-2003-0117
30. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. **It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator.** The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.
31. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's South Coast Regional Office at the above address. If the Operator fails to request the extension prior to the agreement's termination then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement is a violation of Fish and Game Code Section 1600 *et seq.*

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2003-0117

32. The Department reserves the right to cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of the Agreement.

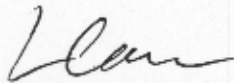
33. The Department reserves the right to suspend or cancel this Agreement for other reasons including, but not limited to, the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

34. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

CALIFORNIA DEPT. OF TRANSPORTATION



(signature)

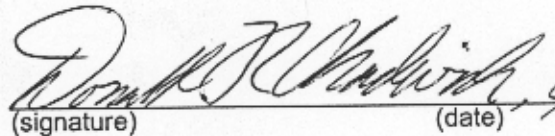
6.16.03

(date)

L. CARR, PRJ MGR

(Type or print name and title)

CALIFORNIA DEPT. OF FISH AND GAME



(signature)

(date)

FOR

C.F. Raysbrook, Regional Manager